and, on a stipulation for a forfeiture, the defaulting party is frequently relieved in any manner made necessary by the circumstances of the case.[11] The right of using the corporate device when exercised to defeat justice may well be controlled by equity in the same way. And although at present the actual decisions do not seem to be governed by any settled theory of granting relief, as yet, except in a very few cases, the corporate personality has been disregarded only when there have been present the elements necessary to the equitable relief suggested.

LIBEL WITHOUT INTENT. — By affirming malice to be the gist of an action for defamation the books have given the impression that this action differs from other tort actions.[1] In fact, however, proof of malice has never been necessary, because, as is said, the law will conclusively presume malice from a publication without excuse or justification.[2] But it has always been clear that, given a libelous publication, the publisher cannot escape liability on the ground that the publication was inadvertent or accidental,[3] or that he did not believe the matter to be libelous;[4] so that a discrepancy exists between the actual requirements of the old courts and what they professed to require. On the other hand, it has been laid down that malice is not necessary; that it is not a question of the defendant's wickedness, but of the injury done to the reputation of the plaintiff in the opinion of other men;[5] and that to determine such injury the courts will regard the tendency of the publication rather than the intention of the publisher.[6] Thus if the plaintiff's friends and neighbors believe that he was referred to,[7] or if that is the reasonable impression conveyed by the publication,[8] the defendant is liable.

The tendency of modern courts in this country is to make no distinction, as regards malice or intention, between tort actions in general and actions for defamation.[9] High authority in England has expressed the view that there is civil responsibility for the consequences of a libelous publication where the defendant should have known that what he published was likely to injure the plaintiff.[10] Further it is said that neither the intention with which a tortfeasor acted, nor the state of his feelings toward the person injured or the public, can make him less responsible for the injury actually caused by his wrongful act.[11] Carelessly to utter defamatory statements entails the same responsibility for the injurious conse-

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[11] Tibbetts *v.* Cate, 66 N. H. 550; 1 Pomeroy, Equity, 3 ed., § 450.

[1] Odgers, Libel and Slander, * 5 and note.
[2] Bromage *v.* Prosser, 4 B. & C. 247.
[3] Odgers, Libel and Slander, * 264; Shepheard *v.* Whitaker, L. R. 10 C. P. 502.
[4] Curtis *v.* Mussey, 72 Mass. 261.
[5] Sheffill *v.* Van Deusen, 13 Gray 304.
[6] Odgers, Libel and Slander, * 264.
[7] Bourke *v.* Warren, 2 C. & P. 307.
[8] The King *v.* Clerk, 1 Barnardiston 304.
[9] Hanson *v.* Globe Newspaper Co., 159 Mass. 293, 302 and 304, *per* Holmes, J.; Farley *v.* Evening Chronicle Pub. Co., 113 Mo. App. 216, 227, and cases cited.
[10] Capital and Counties Bank *v.* Henty, 7 App. Cases 741, 742, *per* Blackburn, J.; Bower, Defamation, p. 55, note; Clerk and Lindsell, Torts, 2 ed., 474.
[11] Farley *v.* Evening Chronicle Pub. Co., *supra.*

quences as negligently to cast about firebrands,[12] or shoot off a gun:[13] since the defendant has in fact done the wrongful act he must be taken to have intended the consequences which naturally resulted.[14]

A recent English decision is in accord with this view of the law, holding that a defendant is liable for a libelous publication intended to refer to a fictitious person but reasonably believed by third persons to refer to the plaintiff. *Jones* v. *Hutton & Co.*, L. R. [1909] 2 K. B. 444. The dissenting opinion, by requiring an intent to publish of and concerning the plaintiff, harks back to the old idea that malice is the gist of the action. But this view has been materially weakened by more recent decisions,[15] whose trend, like that of the main case, is to do away with needless presumptions. It is worthy of note that the main case has called from the learned editor of the LAW QUARTERLY REVIEW the criticism that an action of defamation is not an action of trespass for interference with the plaintiff's reputation considered as property to be meddled with at peril, but an action on the case for a wilful wrong.[16] Nevertheless the same eminent authority has elsewhere stated the common-law doctrine to be, in effect, that "a man acts at his peril in making defamatory statements."[17] It is submitted that this latter is a correct statement of the law, and that intent is not essential to libel.

RIGHTS OF A SECURED CREDITOR OF A BANKRUPT. — A secured creditor of a bankrupt may adopt one of three courses: (1) he may surrender the security and prove in the bankruptcy court for the whole debt;[1] (2) he may rely on his security and not prove;[2] or (3) he may realize on his security and prove for the balance.[3] Some courts allow him to prove for the whole debt and then to realize on the security.[4] This so-called "chancery rule" is adopted by the Federal courts in dealing with insolvent national banks,[4] and by the weight of authority applies in assignments for the benefit of creditors.[5] But it is inapplicable in bankruptcy proceedings under the National Bankruptcy Act.[6]

Interesting questions arise as to the right of a secured creditor to marshal the security against interest accruing after the date of the bankruptcy, up to the date of the liquidation of the security. If the creditor elects to rely on his security and not prove, he may be allowed to realize on this

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[12] Capital and Counties Bank *v.* Henty, *supra.*

[13] Hanson *v.* Globe Newspaper Co., 159 Mass. 293, 301; Odgers, Libel and Slander, *264.

[14] Hill *v.* Winsor, 118 Mass. 251.

[15] Ellis *v.* Brockton Pub. Co., 198 Mass. 538.

[16] 100 Law Quarterly Rev. 341.

[17] Pollock, Torts, 7 ed., 600.

[1] See Cracknall *v.* Janson, 6 Ch. D. 735. Proof of the whole debt as an unsecured debt operates as a waiver of the security. White *v.* Crawford, 9 Fed. 371; *In re* Bear, 5 Fed. 53.

[2] Yeatman *v.* Saving Inst., 95 U. S. 764.

[3] 30 U. S. Stat. at L. 563, sec. 63; White *v.* Simmons, L. R. 6 Ch. App. 555.

[4] Merrill *v.* Nat'l Bank, 173 U. S. 131.

[5] National Bank *v.* Haug, 82 Mich. 607; see 21 HARV. L. REV. 280. There is, however, a strong minority view. Merchants' Nat'l Bank *v.* Eastern Railroad, 124 Mass. 518; Nat'l Union Bank *v.* Nat'l Mechanics' Bank, 80 Md. 371.

[6] 30 U. S. Stat. at L. 563, sec. 63.